

SENATE BILL NO. 486

INTRODUCED BY COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT BROKERS; CLARIFYING THAT A LIFE INSURANCE PRODUCER MAY ACT AS A VIATICAL SETTLEMENT BROKER; CLARIFYING REQUIREMENTS FOR ENTERING INTO A VIATICAL SETTLEMENT CONTRACT; CLARIFYING THE COMMISSIONER OF INSURANCE'S RULEMAKING AUTHORITY WITH RESPECT TO A VIATICAL SETTLEMENT PROVIDER'S PAYMENTS TO AN INSURED THAT IS NOT TERMINALLY OR CHRONICALLY ILL; AND AMENDING SECTIONS 33-2-708, 33-20-1303, 33-20-1313, AND 33-20-1315, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 33-2-708, MCA, IS AMENDED TO READ:

"33-2-708. Fees and licenses. (1) (a) Except as provided in 33-17-212(2), the commissioner shall collect a fee of \$1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.

(b) The commissioner shall collect certain additional fees as follows:

(i) nonresident insurance producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) biennial renewal of license, \$50;

(C) lapsed license reinstatement fee, \$100;

(ii) resident insurance producer's license lapsed license reinstatement fee, \$100;

(iii) surplus lines insurance producer's license:

(A) application for original license and for issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(iv) insurance adjuster's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(v) insurance consultant's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

(vi) viatical settlement broker's license:

(A) application for original license, including issuance of license, if issued, \$50;

(B) biennial renewal of license, \$100;

(C) lapsed license reinstatement fee, \$200;

~~(vi)~~(vii) resident and nonresident rental car entity producer's license:

(A) application for original license, including issuance of license, if issued, \$100;

(B) quarterly filing fee, \$25;

(viii) an original notification fee for a life insurance producer acting as a viatical settlement broker, in accordance with 33-20-1303(2)(b), \$50;

~~(viii)~~(ix) 50 cents for each page for copies of documents on file in the commissioner's office.

(c) The commissioner may adopt rules to determine the date by which a nonresident insurance producer, a surplus lines insurance producer, an insurance adjuster, or an insurance consultant is required to pay the fee for the biennial renewal of a license.

(2) (a) The commissioner shall charge a fee of \$75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than \$1,500 to a sponsoring organization submitting courses or programs for review in any biennium.

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties and those amounts received pursuant to 33-2-311, 33-2-705, 33-28-201, and 50-3-109. All other fees collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33 must be deposited in the state special revenue fund to the credit of the state auditor's office.

(4) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

1 **Section 2.** Section 33-20-1303, MCA, is amended to read:

2 **"33-20-1303. License application requirements.** (1) A person may not act as or purport to be a viatical
3 settlement provider ~~or viatical settlement broker~~ unless licensed as a viatical settlement provider ~~or viatical~~
4 ~~settlement broker~~ under this part.

5 (2) (a) Except as provided in subsection (2)(b) and (2)(c), a person may not broker, solicit, or negotiate
6 viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on
7 behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner.

8 An applicant for a viatical settlement broker's license shall:

9 (i) attend required viatical settlement broker training and pass a viatical settlement broker examination
10 designated by the commissioner by rule; AND

11 (ii) PAY A FEE FOR AN ORIGINAL VIATICAL SETTLEMENT BROKER'S LICENSE PURSUANT TO 33-2-708. THE FEES
12 FOR LICENSE RENEWAL AND LAPSED LICENSE REINSTATEMENT FOR A VIATICAL SETTLEMENT BROKER'S LICENSE ARE AS
13 PROVIDED IN 33-2-708.

14 (b) A resident or nonresident insurance producer must be considered to meet the licensing requirements
15 of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance
16 producer has been IS licensed as an insurance producer with a life insurance line of authority in this state or in
17 the insurance producer's home state AND HAS BEEN LICENSED for at least 1 year. In addition:

18 (i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance
19 producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the
20 insurance producer is acting as a viatical settlement broker and shall pay a fee, not to exceed \$50, as
21 determined by the commissioner PURSUANT TO 33-2-708(1)(B)(VIII). The notification must include an
22 acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement
23 broker in accordance with this part; and.

24 (ii) regardless of the manner in which the insurance producer is compensated, the insurance producer
25 must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the
26 viator's instructions and in the best interests of the viator.

27 (C) IF REQUESTED BY THE COMMISSIONER, A LIFE INSURANCE PRODUCER ACTING AS A VIATICAL SETTLEMENT
28 BROKER UNDER THIS SUBSECTION (2) WHO HAS PREVIOUSLY COMPLIED WITH SUBSECTION (2)(B)(I) SHALL REPORT TO
29 THE COMMISSIONER WHEN RENEWING A RESIDENT OR NONRESIDENT LIFE INSURANCE PRODUCER'S LICENSE REGARDING
30 THE LIFE INSURANCE PRODUCER'S INTENT TO CONTINUE TO ACT AS A VIATICAL SETTLEMENT BROKER. THE STATEMENT

1 REGARDING AN INTENT TO CONTINUE ACTING AS A VIATICAL SETTLEMENT BROKER MUST BE MADE ON THE LIFE INSURANCE
2 PRODUCER'S LICENSE RENEWAL FORM. A PERSON WHO MAKES A STATEMENT PURSUANT TO THIS SUBSECTION (2)(C) MAY
3 NOT BE CHARGED AN ADDITIONAL FEE.

4 (e)(D) The provisions of subsections (2)(a) and (2)(b) do not prohibit a person licensed as an attorney,
5 certified public accountant, or certified financial planner who is accredited by a nationally recognized
6 accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or
7 indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain
8 a license as a viatical settlement broker.

9 (3) REGARDLESS OF THE MANNER IN WHICH A VIATICAL SETTLEMENT BROKER OR INSURANCE PRODUCER IS
10 COMPENSATED, THE VIATICAL SETTLEMENT BROKER OR INSURANCE PRODUCER MUST BE CONSIDERED TO REPRESENT
11 ONLY THE VIATOR AND THE VIATICAL SETTLEMENT BROKER OR INSURANCE PRODUCER OWES A FIDUCIARY DUTY TO THE
12 VIATOR TO ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTERESTS OF THE VIATOR.

13 (2)(3)(4) (a) In order to obtain a license to transact business as a viatical settlement provider or as a
14 viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of
15 subsection (2)(a), an applicant shall apply for the license on forms prescribed IN A FORM APPROVED by the
16 commissioner and shall pay the fee required for the application.

17 (3)(b) The commissioner may request biographical, organizational, locational, financial, employment,
18 and other information on the application form that the commissioner determines to be relevant to the evaluation
19 of applications and to the granting of the license. The commissioner may require a statement of the business
20 plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement
21 provider license to file with the application for the commissioner's approval a copy of the viatical settlement
22 contract that the applicant intends to use in business under the license.

23 (4)(c) If an applicant is a corporation, the corporation must be:

24 (a)(i) incorporated or organized under the laws of this state; or

25 (b)(ii) a foreign corporation authorized to transact business in this state.

26 (5)(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

27 (4)(5) (A) AN INDIVIDUAL LICENSED AS A VIATICAL SETTLEMENT BROKER MUST MEET THE CONTINUING EDUCATION
28 REQUIREMENTS IN 33-17-1203.

29 (B) THE HOURS OF CONTINUING EDUCATION REQUIRED UNDER SUBSECTION (4)(A) MUST BE IN THE SUBJECTS
30 OF LIFE INSURANCE, VIATICALS, OR ETHICS.

1 (C) FOR AN INDIVIDUAL LICENSED AS A VIATICAL SETTLEMENT BROKER, THE 24-MONTH PERIOD FOR MEETING THE
2 CONTINUING EDUCATION REQUIREMENTS MUST CORRELATE WITH THE BROKER'S LICENSE RENEWAL PERIOD.

3 (D) THE VIATICAL SETTLEMENT BROKER'S LICENSE OF AN INDIVIDUAL WHO FAILS TO COMPLY WITH THIS
4 CONTINUING EDUCATION REQUIREMENT AND WHO HAS NOT BEEN GRANTED AN EXTENSION OF TIME TO COMPLY IN
5 ACCORDANCE WITH 33-17-1203(3) MUST BE TERMINATED AND PROMPTLY SURRENDERED TO THE COMMISSIONER."

6
7 **SECTION 3. SECTION 33-20-1313, MCA, IS AMENDED TO READ:**

8 **"33-20-1313. Prohibitions Requirements for entering into viatical settlement contract --**
9 **prohibitions on finder's fee -- solicitations -- discrimination -- false or misleading advertising or**
10 **solicitation -- misuse of confidential information. (1) A person may not enter into a viatical settlement contract**
11 **within a 2-year period from the date of issuance of an insurance policy or certificate unless the person certifies**
12 **to the viatical settlement provider that one or more of the following conditions have been met within the 2-year**
13 **period:**

14 (a) (i) the policy or certificate was issued upon the person's exercise of conversion rights arising out of
15 a group or individual policy or certificate and the total of the time covered under the conversion policy or
16 certificate plus the time covered by the policy or certificate prior to the conversion equal at least 24 months; and

17 (ii) the time covered under a group policy or certificate was calculated without regard to any change in
18 insurance carriers if the coverage was continuous and under the same group sponsorship; or

19 (b) the person submits independent evidence to the viatical settlement provider that one or more of the
20 following conditions have been met within the 2-year period:

21 (i) the person is terminally ill or chronically ill; or

22 (ii) the person has disposed of the person's ownership interest in a closely held corporation pursuant
23 to the terms of a buyout agreement or similar agreement that was in effect at the time that the insurance policy
24 or certificate was issued.

25 (2) Copies of the certification and independent evidence required under subsection (1) must be
26 submitted by the viatical settlement provider to the insurer when the viatical settlement provider submits a
27 request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from
28 the viatical settlement provider that the copies are true and correct copies of the documents received by the
29 viatical settlement provider.

30 (+)(3) A licensee may not pay or offer to pay a finder's fee, commission, or other compensation to a

1 person described in this subsection ~~(4)~~ (3) in connection with a policy insuring the life of an individual with a
2 terminal illness or condition. The prohibition under this subsection ~~(4)~~ (3) applies with respect to payments or
3 offers of payment to:

4 (a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured
5 individual;

6 (b) any person other than a physician, attorney, or accountant described in subsection ~~(4)(a)~~ (3)(a) who
7 provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the
8 insured individual when the individual is other than the policyholder or certificate holder; or

9 (c) any person other than one described in subsection ~~(4)(a)~~ (3)(a) or ~~(4)(b)~~ (3)(b) who acts as an agent
10 of the policyholder, certificate holder, or insured individual.

11 ~~(2)(4)~~ A licensee may not solicit an investor who could influence the treatment of the illness or condition
12 of the individual whose life would be the subject of a viatical settlement contract.

13 ~~(3)(5)~~ All information solicited or obtained from a policyholder or certificate holder by a licensee is
14 subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection, a
15 licensee must be considered an insurance-support organization as defined in 33-19-104.

16 ~~(4)(6)~~ A licensee may not discriminate in the making of a viatical settlement contract on the basis of
17 race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may
18 not discriminate between persons who have dependents and persons who do not have dependents.

19 ~~(5)(7)~~ A person licensed pursuant to 33-20-1304 may not engage in any false or misleading advertising,
20 solicitation, or practice as described in 33-18-203.

21 ~~(6)(8)~~ A person licensed pursuant to 33-20-1304 may not sell another product of insurance to the
22 contract holder unless approval is obtained from the commissioner."

23
24 **Section 4.** Section 33-20-1315, MCA, is amended to read:

25 **"33-20-1315. Rules -- standards -- bond.** The commissioner may, in accordance with the provisions
26 of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

27 (1) may establish standards for evaluating reasonableness of payments under viatical settlement
28 contracts for insured persons who are terminally ill or chronically ill. The authority includes but is not limited to
29 regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale,
30 devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner

1 shall consider payments made in regional and national viatical settlement markets to the extent that this
2 information is available, as well as model standards developed by the national association of insurance
3 commissioners. When the insured is not terminally ill or chronically ill, the commissioner may not establish
4 standards for evaluating the reasonableness of payments, except that a viatical settlement provider shall pay
5 an amount greater than the GREATER OF THE cash surrender value or THE accelerated death benefit then
6 available.

7 (2) shall require a bond or other mechanism for financial accountability of viatical settlement providers
8 and viatical settlement brokers; and

9 (3) shall adopt rules to establish:

10 (a) trade practice standards for the purpose of regulating advertising and solicitation of viatical
11 settlement contracts; ~~and~~

12 (b) fees that are commensurate with fees charged pursuant to 33-2-708; ~~and~~; AND

13 (C) THE CONTINUING EDUCATION PROGRAM PROVIDED FOR IN 33-20-1303(4).

14 ~~—— (4) shall require viatical settlement providers or viatical settlement brokers to pay an amount greater~~
15 ~~than the cash surrender value or accelerated death benefit if the insured is not terminally ill or chronically ill."~~

16 - END -